

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:

Power Home Solar, LLC

Debtor(s).

Chapter 7

Case No. 22-50228

**OBJECTION TO AMENDED CLAIMS OF JPMORGAN CHASE BANK, N.A.,
AS ADMINISTRATIVE AGENT (AMENDED CLAIM NO. 3901) AND
JPMORGAN CHASE BANK, N.A. (AMENDED CLAIM NO. 3904)**

NOW COMES, Jimmy R. Summerlin, Jr., Trustee, by and through the undersigned counsel, pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007, and hereby objects to the Proof of Claims filed by **JPMorgan Chase Bank, N.A., As Administrative Agent**, and **JPMorgan Chase Bank, N.A.** (“Claimants”), and, in support, respectfully represents:

1. Power Home Solar, LLC d/b/a Pink Energy (the “Debtor” or “PHS”) filed a petition under the Bankruptcy Code in this Court on October 7, 2022.

2. Jimmy R. Summerlin, Jr. is the duly appointed, qualified and acting Trustee of the Debtor’s Chapter 7 case.

3. On February 10, 2023, Claimants filed in the records of this Court certain Proof of Claims marked in the Court’s Claims Register as Claim Nos. 3901 (the “Loan Claim”) and 3904 (the “Credit Card Claim”) (collectively, the “Claims”), which Claims are alleged to be secured by “All Assets” of the Debtor.

4. On March 9, 2023, the Trustee filed his Objection to the Claims (Docket No. 366).

5. On March 24, 2023, in partial response to the Objection, JPMorgan filed amendments to the Claims (the “Amended Claims”).

6. The Trustee files this Objection for the purposes of clarifying that the Amended Claims did not satisfy most of the Trustee’s objections to the originally filed Claims and that the Trustee maintains those objections as set forth herein.

7. The Debtor is/was a Delaware limited liability. The Trustee asserts that, except a specifically set forth in the Bankruptcy Code and or Article 9 of the Delaware Uniform Commercial Code, matters governing the creation, perfection, priority, and other issues concerning Claimants’ alleged secured status are governed by the Delaware Uniform Commercial Code (the “UCC”).

8. The Trustee objects to the Claims on the following grounds and requests the Court to determine whether Claimants holds a properly perfected security interest in certain of the Debtor's assets, as follows:

- a. The Trustee objects if and to the extent the Claims allege a security interest in any asset in which the Claimants have acknowledged no lien in that certain *Order on Trustee's Motion (A) For Approval of Carve-Out Agreement with JPMorgan Chase, N.A., ET AL., for Liquidation of the Debtor's Assets; (B) For Approval of Auction Marketing Agreement; and (C) To Sell Assets Free and Clear of Any and All Liens, Encumbrances, Claims and Interests* (the "Sale Order") (Docket No. 232), including specifically, but without limitation, the Title Property and the Chapter 5 Actions (each as defined in the Sale Order).
- b. The Trustee objects if and to the extent the Claims allege a security interest in any Commercial Tort Claims, as defined in the UCC, in any cases other than the following:
 - i. PHS v. Orbit Marketing LLC (d/b/a Climax Solar) and Joshua Thompson - Case No. 21-cv-703, United States District Court, Western District of Michigan;
 - ii. PHS v. Hummingbird Solar LLC and Bradley Shaver - Case No. 2021-cvs-332, General Court of Justice Superior Court Division, County of Iredell, NC;
 - iii. PHS v. Christopher Lavalla - Case No. 2021-CP-40-02641, Court of Common Pleas for Fifth Judicial District, County of Richland, SC;
 - iv. HS v. Lucas McDermott - Case No. 2:21-cv-02229-CSB, United States District Court for the Central District of Illinois;
 - v. PHS v. Eric Heath - Case No. 3:21-cv-02229-CMC, United States District Court for the District of South Carolina; and
 - vi. PHS v. Lyle Ciardi - Case No. 21-cvs-11484, Superior Court Division for the County of Mecklenburg, North Carolina.
- c. The Trustee objects to the alleged security interest in any Commercial Tort Claims against Generac Power Systems, Inc., including specifically, but without limitation, those set forth in PHS v. Generac Power Systems, Inc. – Case No. 6:22-cv-000043-NKM, United States District Court for the Western District of Virginia. The Trustee alleges such security interests are avoidable pre-petition transfers and potential Chapter 5 Action and reserves all rights to bring Chapter 5 Actions in accordance with the provisions of the Sale Order.
- d. The Trustee objects if and to the extent the Claims allege a security interest in any Deposit Accounts, as defined in the UCC, over which Claimants do not maintain control, as defined in the UCC.
- e. The Trustee objects if and to the extent the Claims allege a security interest in any Employee Retention Tax Credits, including specifically, but without limitation, any credits that may be due the Debtor/Estate pursuant to the CARES Act, the Consolidated Appropriations Act of 2021, the American Rescue Plan Act of 2021,

and the Infrastructure Act of 2021, each as may have been or may be modified, amended, or extended from time to time.

- f. The Trustee objects if and to the extent that Claims allege a security interest in any tax refunds for any taxing period ending after the Petition Date (i.e., tax years 2022 and following).
- g. The Trustee objects if and to the extent the Claims allege a security interest in any assets of the debtor not specifically identified or adequately described, in accordance with the UCC, in that certain Pledge and Security Agreement dated November 23, 2021 by and between the Debtor and Claimants.
- h. The Trustee objects to the amount stated for the Credit Card Claim in that the Trustee is without sufficient information from which to properly evaluate and review the veracity of the amount claimed and, in particular, but without limitation, the Credit Card Agreement provides for the possibility of various rebates and potentially other credits for which the Trustee lacks information.
- i. To the extent they are contrary to the facts herein or applicable law, the Trustee objects to the generalized statements contained in Paragraph 10 of the Loan Claim and Paragraph 11 of the Credit Card Claim.

9. The Trustee reserves the right to (a) amend and/or supplement this Objection at any time and in any manner; and (b) to file additional objections should the Claims be amended or additional claims filed by Claimants.

WHEREFORE, the Trustee respectfully prays the Court to hold one or more hearings to determine if and/or to what extent Claimants holds a properly perfected security interest in certain of the Debtor's assets, as described above, the validity of the Claims, and for such other and further relief as is just and proper.

NOTE: No Notice of Hearing is included. Hearings will be noticed following scheduling in consultation with Claimants' counsel and the Court.

Dated: April 21, 2023.

YOUNG, MORPHIS, BACH & TAYLOR, LLP

/s/ Jimmy R. Summerlin, Jr.

Jimmy R. Summerlin, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served by electronic notification on those parties registered with the United States Bankruptcy Court, Western District of North Carolina ECF system to receive notices for this case on April 21, 2023.

Dated: April 21, 2023.

YOUNG, MORPHIS, BACH & TAYLOR, LLP

/s/ Jimmy R. Summerlin, Jr.

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